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Filing date: **01/08/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187786
Party	Defendant DROSSAPHARM AG
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Date	01/08/2009
Attachments	Proceeding-91187786-Answer.pdf ( 8 pages )(243136 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 77/234,542

Filed: July 20, 2007

For Mark: ROSALOX

Published in the Official Gazette: July 22, 2008

NYCOMED US INC.	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	91187786
DROSSAPHARM AG	:	
	:	
Applicant	:	
(Defendant):	:	

A N S W E R

Trademark Trial and Appeal Board  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Sir:

Applicant (Defendant) Drossapharm AG ("Applicant"), as and for its Answer to the Notice of Opposition filed by Nycomed US Inc. ("Opposer"), alleges as follows:

1. Applicant admits the allegations set forth in paragraph 1 of the Notice of Opposition.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Notice of Opposition, and therefore denies the same.
3. Applicant admits the allegations set forth in paragraph 3 of the Notice of Opposition.

4. Applicant admits the allegations set forth in paragraph 4 of the Notice of Opposition.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Notice of Opposition, and therefore denies the same.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Notice of Opposition, and therefore denies the same.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Notice of Opposition, and therefore denies the same.

9. Applicant, upon information and belief, denies the allegations set forth in paragraph 9 of the Notice of Opposition.

10. Applicant states that its mark is clearly distinguishable from Opposer's mark and otherwise denies the allegations set forth in paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations set forth in paragraph 11 of the Notice of Opposition.

12. Applicant admits the allegations set forth in paragraph 12 of the Notice of Opposition, except that applicant denies that such approval, authorization or acquiescence of Opposer was necessary.

13. Applicant denies the allegations set forth in paragraph 13 of the Notice of Opposition.

14. Applicant admits that if granted a registration, it would obtain prima facie rights to use the mark, but denies that such registration would be a source of further damage or injury to Opposer, and otherwise denies the allegations set forth in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations set forth in paragraph 15 of the Notice of Opposition.

#### Affirmative Defenses

##### 16. First Affirmative Defense

On information and belief, the prefix ROS refers to products that treat Rosacea. Upon further information and belief, Opposer cannot claim exclusive rights to the prefix ROS in connection with products intended to treat Rosacea, particularly in view of the numerous other registered marks with the prefix ROS that treat dermatological conditions including Rosacea.

17. Second Affirmative Defense

At the time that Opposer filed its application on August 16, 2001, Opposer had at least constructive notice of Applicant's prior non-expired U.S. Registration No. 2,477,795 issued August 14, 2001 based on an application filed June 6, 2000, for the exact mark and exact goods as Applicant's present application serial no. 77/234,542. At the time of filing their application, Opposer made representations in their declaration that "to the best of my knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive."

Opposer has therefore either made misrepresentations in their application or implicitly admitted no likelihood of confusion.

18. Third Affirmative Defense

At the time that Opposer filed its application on August 16, 2001, Opposer had at least constructive notice of Applicant's prior non-expired U.S. Registration No. 2,477,795 issued August 14, 2001 based on an application filed June 6, 2000, for the

exact mark and exact goods as Applicant's present application serial no. 77/234,542. At the time of filing their application, Opposer made representations in their declaration that "to the best of my knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive."

For the reasons set forth, Applicant alleges that Opposer has unclean hands and therefore no basis for this opposition.

#### 19. Fourth Affirmative Defense

At the time that Opposer filed its application on August 16, 2001, Opposer had at least constructive notice of Applicant's prior non-expired U.S. Registration No. 2,477,795 issued August 14, 2001 based on an application filed June 6, 2000, for the exact mark and exact goods as Applicant's present application serial no. 77/234,542. At the time of filing their application, Opposer made representations in their declaration that "to the best of my knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on

or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive."

For the reasons set forth, Applicant alleges that Opposer has admitted that there is no likelihood of confusion.

20. Fifth Affirmative Defense

At the time that Opposer filed its application on August 16, 2001, Opposer had at least constructive notice of Applicant's prior non-expired U.S. Registration No. 2,477,795 issued August 14, 2001 based on an application filed June 6, 2000, for the exact mark and exact goods as Applicant's present application serial no. 77/234,542. At the time of filing their application, Opposer made representations in their declaration that "to the best of my knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive."

For the reasons set forth, Opposer has therefore failed to

state a claim on which to base this action.

January 8, 2008  
Dated

Respectfully Submitted,

Richard M. Goldberg

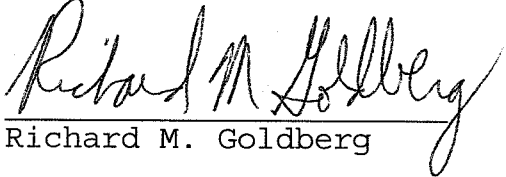
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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2009, I caused a true and correct copy of the foregoing Answer to be served on Opposer via first class mail, postage prepaid, addressed to its counsel of record as follows:

Linda M. Byrne, Esq.  
Crawford Maunu PLLC  
1150 Northland Drive, Suite 100  
St. Paul, MN 55120

  
Richard M. Goldberg